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13 Attorneys for Receiver
14 KRISTEN A. JANULEWICZ

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 v.

21 TOTAL WEALTH MANAGEMENT,
22 INC.; et al.,

23 Defendants.

Case No. 15-cv-226 BAS (DHB)

NO HEARING REQUIRED

JOINT MOTION OF PLAINTIFF,
SECURITIES AND EXCHANGE
COMMISSION, RECEIVER, KRISTEN
A. JANULEWICZ, NON-PARTY
STRATEGIC FUNDING, INC., AND
DEFENDANT, JACOB COOPER, TO
RELEASE FUNDS HELD IN TRUST

[Proposed Order submitted concurrently
herewith]

Judge: Hon. Cynthia Bashant

24 **JOINT MOTION**

25 This Joint Motion is made by and between Kristen A. Janulewicz (the
26 "Receiver"), the Court-appointed permanent receiver for Total Wealth Management,
27 Inc., and its subsidiaries and affiliates, including, but not limited to Altus Capital
28 Management, LLC (collectively, the "Receivership Entities" or "Entities" or in the
singular, "Entity") and non-Party Strategic Funding, Inc. ("Strategic"), with the
concurrence of the Plaintiff Securities and Exchange Commission (the
"Commission") and Defendant Jacob Cooper, by and through their counsel of record

1 or non-party counsel, and who hereby jointly request the relief specified below
2 ("Joint Motion"), with reference to the following facts:

3 A. On February 4, 2015, this Court entered its Stipulation and Temporary
4 Restraining Order and Orders (1) Freezing Assets; (2) Prohibiting the Destruction of
5 Documents; (3) Granting Expedited Discovery; (4) Requiring Accountings;
6 (5) Appointing a Temporary Receiver, and Order to Show Cause re Preliminary
7 Injunction and Appointment of Permanent Receiver (the "TRO").

8 B. On February 12, 2015, this Court entered its (1) Preliminary Injunction,
9 Appointment of a Permanent Receiver, and Related Orders; and (2) Order Vacating
10 Hearing on Preliminary Injunction (the "PI") (the TRO and PI are referred to herein
11 collectively as the Court's "Appointment Orders").

12 C. Among other things, the Court's Appointment Orders appointed the
13 Receiver, initially as a temporary receiver for the Receivership Entities, and later as
14 the permanent receiver for the Entities.

15 D. The Court's Appointment Orders additionally empowered the Receiver
16 to take necessary and appropriate action to assume authority and control over,
17 preserve, and prevent the dissipation, concealment, or disposition of Entity assets,
18 and to make agreements as necessary to discharge her duties as the Receiver.

19 E. As addressed in the Receiver's First Interim Report and Petition for
20 Further Instructions ("First Interim Report") (Docket No. 43), millions of dollars in
21 investor funds were invested in Metropolitan Coffee and Concession Company,
22 LLC ("Metro Coffee") by the Receivership Entities. Metro Coffee operated Peet's
23 Coffee stores in Bay Area Rapid Transit District ("BART") stations in San
24 Francisco, California. The Receiver was appointed in the midst of Metro Coffee's
25 Chapter 11 bankruptcy case, which remains pending (now as a Chapter 7
26 bankruptcy case) in the United States Bankruptcy Court for the Northern District of
27
28

1 California (the "Bankruptcy Court")¹, and during Metro Coffee's efforts to liquidate
2 bankruptcy estate property.

3 F. In an effort to protect against further losses in connection with the
4 Metro Coffee investment, the Receiver worked with the Bankruptcy Court-
5 designated Responsible Person for Metro Coffee to negotiate the sale of Metro
6 Coffee's assets (along with the necessary BART permits, held by Aegis Holding
7 Company, Inc., Metro Coffee's parent). The sale was concluded in May 2015 and
8 \$260,000 in surplus proceeds from the sale (the "Metro Coffee Funds") were
9 transferred to the Receiver, by agreement with Strategic, to be held in trust pending
10 a further determination of each party's rights in and to the Metro Coffee Funds.

11 G. Strategic, a putative creditor of Metro Coffee and Aegis Holding,
12 claims a security interest in the Metro Coffee Funds equal to or superior to that of
13 the Receiver.

14 H. The Receiver has reviewed all materials provided by Strategic in
15 support of its security interest claim and has concluded that Strategic's claim to a
16 security interest in the Metro Coffee funds equal to or superior to the Receiver's has
17 or may have merit.

18 I. Strategic and its counsel have reviewed the Receiver's claim that the
19 Receiver has an equal or superior interest in the Metro Coffee Funds by virtue, *inter*
20 *alia*, of the equitable fact that such funds presently exist for disposition due to the
21 actions of the Receiver, and have determined that the Receiver's claim has or may
22 have merit.

23 J. The Receiver and Strategic now desire to fully compromise and resolve
24 their competing claims relating to the Metro Coffee Funds, and to avoid the expense
25 and uncertainty of litigation, by entering into this Joint Motion.

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27
28 ¹ In re Metropolitan Coffee and Concession Company, LLC, USBC, N.D. Cal.
Case No. 14-44242.

1 K. Accordingly, the Receiver and Strategic, with the concurrence of the
 2 Commission and Defendant Cooper, have determined to divide the \$260,000 in
 3 Metro Coffee Funds, with Strategic receiving \$180,000, and with the Receiver
 4 retaining \$80,000.

5 L. Upon the entry of an Order from this Court granting the instant Joint
 6 Motion, and without further Order, Strategic will release any and all claims it has or
 7 may have against the Metro Coffee Funds, save claims for the payment of the
 8 \$180,000 addressed herein. Likewise, upon entry of an Order from this Court
 9 granting the instant Joint Motion, the Receiver will release any and all claims the
 10 Receivership Entities have or may have against Strategic relating to the \$180,000
 11 portion of the Metro Coffee Funds that will be released pursuant to the Joint Motion.

12 **RELIEF REQUESTED**

13 As a consequence of the above-described facts, the Receiver and Strategic,
 14 with the concurrence of the Commission and Defendant Cooper, jointly move this
 15 Court for an Order:

16 1. Authorizing the Receiver to release \$180,000 of the Metro Coffee
 17 Funds to Strategic;

18 2. Authorizing the Receiver to retain the remaining \$80,000 of the Metro
 19 Coffee Funds for the benefit of the Receivership Entities.

20 3. Authorizing Strategic, the Receiver, and the Receivership Entities to
 21 release claims against each other relating to the Metro Coffee Funds.

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1 THE SIGNATORIES BELOW CERTIFY THAT THE CONTENT OF THIS
2 DOCUMENT IS ACCEPTABLE TO ALL PERSONS REQUIRED TO SIGN
3 THIS JOINT MOTION, AND THAT EACH HAS AUTHORIZED THE USE
4 OF AN ELECTRONIC SIGNATURE ON THIS JOINT MOTION.

5 Dated: December __, 2015

6 ALLEN MATKINS LECK GAMBLE
7 MALLORY & NATSIS LLP
8 DAVID R. ZARO
JOSHUA A. DEL CASTILLO
KENYON HARBISON

9 By: /s/ Joshua A. del Castillo
10 JOSHUA A. DEL CASTILLO
11 Attorneys for Receiver
KRISTEN A. JANULEWICZ

12 Dated: December __, 2015

13 VLP Law Group LLP
14 MARK D. TAYLOR


15 By: /s/ Mark D. Taylor
16 MARK D. TAYLOR
17 Attorneys for Non-Party
18 STRATEGIC FUNDING, INC.

19 Dated: December __, 2015

20 SECURITIES AND EXCHANGE
21 COMMISSION
22 JOHN B. BULGOZDY
23 DAVID J. VANHAVERMAAT
24 CAROL LALLY

25 By: /s/ John B. Bulgozdy
26 JOHN B. BULGOZDY
27 Attorneys for Plaintiff
28 SECURITIES AND EXCHANGE
COMMISSION

29 Dated: December 16, 2015

30 JACOB COOPER
31 By: 
32 Defendant
33 JACOB COOPER

1 THE SIGNATORIES BELOW CERTIFY THAT THE CONTENT OF THIS
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4 OF AN ELECTRONIC SIGNATURE ON THIS JOINT MOTION.

5
6 Dated: December 17, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
KENYON HARBISON

9 By: /s/ Joshua A. del Castillo

10 JOSHUA A. DEL CASTILLO
11 Attorneys for Receiver
KRISTEN A. JANULEWICZ

12
13 Dated: December 17, 2015

VLP Law Group LLP
MARK D. TAYLOR

14
15 By: /s/ Mark D. Taylor

16 MARK D. TAYLOR
17 Attorneys for Non-Party
STRATEGIC FUNDING, INC.

18 Dated: December 17, 2015

SECURITIES AND EXCHANGE
COMMISSION
JOHN B. BULGOZDY
DAVID J. VANHAVERMAAT
CAROL LALLY

21 By: /s/ John B. Bulgozdy

22 JOHN B. BULGOZDY
23 Attorneys for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION

24
25 Dated: December __, 2015

JACOB COOPER

26 By: _____

27 Defendant
28 JACOB COOPER

PROOF OF SERVICE

Securities and Exchange Commission v. Total Wealth Management, Inc., et al.
USDC, Southern District of California – Case No. 15-cv-226 BAS (DHB)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

**JOINT MOTION OF PLAINTIFF, SECURITIES AND EXCHANGE
COMMISSION, RECEIVER, KRISTEN A. JANULEWICZ,
NON-PARTY STRATEGIC FUNDING, INC., AND DEFENDANT,
JACOB COOPER, TO RELEASE FUNDS HELD IN TRUST**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **December 17, 2015**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Vincent J. Brown**
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- **John Bulgozdy**
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- **Joshua Andrew del Castillo**
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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On **December 17, 2015**, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit.

Mikel R. Bistrow, Esq.
Ballard Spahr LLP
655 W. Broadway, Suite 1600
San Diego, CA 92101

Via U.S. First Class Mail

Richard M. Kipperman
PO Box 3010
La Mesa, CA 91944-3010

Via U.S. First Class Mail

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **December 17, 2015** at Los Angeles, California.


Martha Diaz